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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. LINDA SUE COPELAND, Defendant and Appellant.	B261493 (Los Angeles County Super. Ct. No. VA105792)

APPEAL from a judgment of the Superior Court of Los Angeles County. John A. Torribio, Judge. Affirmed and remanded with directions.

Jonathan E. Demson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, and Michael Katz, Deputy Attorney General, for Plaintiff and Respondent.

Linda Sue Copeland appeals from the judgment entered following a jury trial in which she was convicted of the second degree murder of her father in violation of Penal Code section 187.[1] The trial court sentenced appellant to a term of 15 years to life in state prison.

Appellant contends the trial court's denial of her motion to suppress statements to police violated her Fifth Amendment privilege against self-incrimination, requiring reversal of her conviction. Appellant alternatively contends, and respondent concedes, that the matter should be remanded to allow the trial court to exercise its discretion regarding probation in light of a current supplemental probation report. We conclude that any error in admitting appellant's recorded statements was harmless beyond a reasonable doubt because appellant was not in custody when she first confessed to suffocating her father. We nevertheless remand to enable the trial court to order a supplemental probation report and to exercise its sentencing discretion in light of that report.

FACTUAL BACKGROUND

Prosecution Evidence

Appellant moves in with her father

In 2004 after losing her job at age 52, appellant moved in with her father, Ralph Stofleth, a retired auto plant worker and World War II veteran. Appellant had grown up in the two-bedroom home with both of her parents, but had not lived there in many years. Her father, who was 86 when appellant moved in, had lived alone in the house since his wife (appellant's mother) died in 1997.

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[1] Undesignated statutory references are to the Penal Code.

Appellant had been married four times, and had two adult children. Appellant's son, Robert Cavanaugh, spoke with his mother on the phone and visited his mother and grandfather three to six times a year. Although he had not noticed any abnormal behavior on his mother's part when he was growing up, he became aware of signs of mental illness when she moved in with his grandfather. Specifically, she frequently expressed paranoid beliefs that people were after her and were intent on breaking into the home. On several occasions she told Cavanaugh that a network of homeless people was pursuing her and communicating with each other using cricket calls outside the window. She was in constant fear that someone was trying to steal the deed to the house and would sell it out from under them, and she became fixated on paperwork having to do with her father's trust and his will. Appellant chain-smoked incessantly and was always agitated. Her paranoid delusions increasingly rendered any kind of normal conversation extremely difficult. Cavanaugh described his mother as "delusional" and thought she may have experienced hallucinations.

Shortly after she moved in with her father, appellant told her next door neighbor, Kristine Van Hofwegen, that she believed people were watching and listening to her through the phone and power lines going into the house. Periodically, appellant made requests Van Hofwegen thought strange. In the spring or summer of 2007, police responded to appellant's claim that there was a burglar in her house. The investigation failed to turn up any evidence of a burglary, but, convinced that an intruder was still in her home, appellant asked Van Hofwegen if she could sleep at Van Hofwegen's house. Appellant began asking if she could go through the Van Hofwegens' back gate and alley to go to

the liquor store because she believed she was being watched and followed.

Shortly after moving in with Stofleth, appellant stopped maintaining her personal appearance, to the point of looking and smelling like a homeless person. She was extremely dirty and wore the same clothes for days or weeks at a time. By early 2008 Cavanaugh found his mother's appearance shocking, and he was embarrassed to take her out in public.

Stofleth's gardener, Paul Renzacci, also noticed changes in appellant's demeanor and appearance. Whereas she had been very friendly and attractive when he first met her, she became increasingly strange and reclusive, avoiding personal interaction as much as possible. She became "rundown-looking, like she wasn't taking care of herself," and her personal hygiene seemed to deteriorate.

Stofleth disappears

Prior to February 2008, Van Hofwegen saw Stofleth outside puttering around the yard almost daily, and Stofleth threw the sports section of the newspaper over the fence for Van Hofwegen's husband every day. But in February, Stofleth stopped throwing the newspaper over the fence, and Van Hofwegen never saw him outside. Van Hofwegen checked with the neighbors, but none of them had seen him either.

On March 11, 2008, police went to Stofleth's house to check on his welfare in response to a call from one of the neighbors. Appellant answered the door and assured the officers her father was fine. She explained that he was in Oklahoma caring for his sister and would return in two to three months. Satisfied with appellant's explanation, the police did not pursue the matter further.

Around February, appellant instructed Renzacci to mow the back lawn only once a month. About this time Renzacci noticed a pile of debris had appeared near the shed. Although Renzacci did not see Stofleth after Christmas, 2007, he continued to receive payment by personal check from Stofleth every month in the mail. Starting in March 2008, however, Renzacci noticed that the handwriting on the checks had changed.

Cavanaugh last saw his grandfather alive in February 2008, when he paid him a surprise visit. Cavanaugh stayed a half hour to an hour and planned to visit again in April. After that visit, whenever Cavanaugh called and asked to speak with his grandfather, appellant gave some sort of excuse for not putting Stofleth on the phone. In April, Cavanaugh received a birthday card from his mother in which she wrote: "Robert, no need to come by or call. We'll get together . . . next month. [Your grandfather] will call you then probably after the 5th. He says, 'Happy birthday.' " Another planned visit for Mother's Day also did not materialize. Cavanaugh then received a letter on May 17, 2008, informing him that Stofleth had gone to Oklahoma for a few weeks. The letter purported to be from his grandfather, but the writing was not Stofleth's.

Stofleth's body is discovered in the backyard

In May Van Hofwegen realized she had still not seen any sign of Stofleth, and she called the police to request another welfare check. On May 19, 2008, Sheriff's Sergeant Ryan Vienna and Deputy Espinoza, along with two other deputies, went to Stofleth's home. They spoke briefly with appellant, who advised Sergeant Vienna that her father was on vacation in Oklahoma and would be returning in about three weeks. Vienna relayed appellant's response to Van Hofwegen, who became adamant that

something was wrong and the police needed to investigate further. As Van Hofwegen was speaking with the officers, appellant came outside and offered to get a telephone number for Stofleth. Sergeant Vienna and Deputy Espinoza followed appellant back to the house. Appellant retreated inside, and the officers waited at the front door for her to return with the phone number.

After about three minutes, Sergeant Vienna asked appellant if they "could come in and make sure Mr. Stofleth wasn't shoved in the washer or anything like that." With appellant's permission, Vienna and Espinoza entered the house and looked around inside before proceeding to the backyard. As they entered the backyard, they were joined by a third officer, Deputy Morales. Sergeant Vienna immediately noticed the odor of a decomposing body. Appellant became increasingly nervous, and asked for assistance moving her trash bins, which were on the opposite side of the yard from the shed. Deputy Morales helped appellant move the trash bins to the front of the house while the other officers remained in the backyard.

Sergeant Vienna noticed the debris pile next to the shed. Upon closer examination he could see something wrapped in what looked like a white bed sheet at the base of the pile under some cardboard and wire. Insects were lighting and crawling on the sheet, and there appeared to be blood on it. As Sergeant Vienna cut a slit in the sheet he saw a decomposed skull and realized the sheet held a corpse in an advanced state of decomposition.

Sergeant Vienna ordered the officers to secure the scene pending an investigation, and returned to his patrol car to notify

the Sheriff's Homicide Bureau of the situation and to complete the necessary paperwork for the investigation.

Appellant's statements to police

Because it was extremely hot that day, appellant sat in the back of Sergeant Vienna's air conditioned patrol car. Sergeant Vienna got into the driver's seat and spoke to a deputy in the Homicide Bureau, who suggested Vienna ask appellant what had happened. Sergeant Vienna told appellant they had found a body in the backyard and asked if that was her father. Appellant responded that it was. Sergeant Vienna then asked her what had happened, and she told him she had smothered her father with a pillow.

Appellant indicated she wanted to smoke a cigarette, whereupon they got out of the car and sat on the curb. At some point, Sergeant Vienna began recording the conversation.[2] Appellant denied having any sort of argument with her father, stating simply, "I don't know what happened. . . . All I know is that . . . I smothered him" with a pillow. Appellant explained that it was the first week of February, and her father was in bed about 10:00 p.m. when she went into his room and suffocated him. The next morning, she tied a rope around his feet and dragged her father's body, wrapped in the bed sheets, outside to the backyard. She left the body in the spot where Sergeant Vienna had found it next to the shed and covered it with debris. Over the next few months, appellant paid the gardener and other

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[2] At no time did Sergeant Vienna or any other police officer advise appellant of her rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

household bills out of her father's checking account to keep the household running.

Sergeant Vienna arrested appellant and transported her to the Sheriff's Department Lakewood Station. There, Homicide Detectives Tomlin and Hecht conducted another recorded interview. They began by advising appellant of her *Miranda* rights. Appellant explained that she was an only child and had grown up in that house with her parents. In 2004, after appellant lost her job and was having financial problems, her father somewhat reluctantly allowed her to move in with him. Appellant got along with Stofleth, but was not close to him, and they did not talk much. Outside of a bladder infection, appellant was unaware of her father having any health problems.

Appellant recalled that when police had come to her home a month before to check on her father's welfare, she had falsely told them Stofleth was in Oklahoma. In fact, she knew he was already lying dead in the backyard because she had dragged him out there and covered him up herself in early February. Appellant also admitted that, shortly before Stofleth's body was discovered, she had written Cavanaugh a letter in which she falsely told him Stofleth was going to "be gone." She admitted she had lied because she thought her son was growing suspicious. By this time, she had realized she could not hide the body in the backyard forever, but explained she was scared.

After repeated questions about the details of how Stofleth died, appellant finally admitted that she had smothered her father with a pillow one night in early February while he was sleeping in his bed. He had squirmed "a little bit." The next morning she tied a rope around his feet and dragged his body into the backyard, where she left it by the shed wrapped in the sheet

and blanket from his bed. She covered him with wire gardening lattice and some cardboard she had found in the parking lot of the liquor store.

Appellant insisted that "nothing was planned . . . it's just the way things happened." Pressed for some reason for killing her father, appellant simply said, "Well, I guess it's just the right time," but she could not explain what she meant by that.

Appellant denied a financial motive for the killing. She acknowledged writing checks on her father's account and signing his name, but only did so to cover household necessities and "to make things look normal." She knew that her father had established a trust which held his assets, including the house, and that, as his only child, she was the beneficiary of the trust. But appellant was concerned that he had refused to sign a particular trust document that would enable her to take over his affairs and sell the house.

Other evidence

Raffi Djabourian, a forensic pathologist and senior deputy medical examiner, conducted the autopsy. Stofleth's body was partially skeletonized, and his organs had degraded substantially, to the point that some were no longer identifiable. Dr. Djabourian opined that, given the state of decomposition, the body could have been there for weeks, months, or even years, depending on environmental factors. X-ray analysis indicated no blunt force or penetrating-type trauma such as might be caused by clubbing, gunshot, or stabbing. There was no evidence of a catastrophic heart attack. The location and concealment of the body were inconsistent with suicide or accidental death. Toxicological findings were negative. Although some other causes of death could not be ruled out, Dr. Djabourian classified

Stofleth's death as a homicide through asphyxia, based on the autopsy, the circumstances of the disposal of the body, and information that the decedent had been suffocated. The autopsy did, however, reveal that Stofleth suffered from advanced heart disease, which Dr. Djabourian conceded might explain the 90-year-old's death.

Stofleth's bank records revealed that between February 1 and May 23, 2008, Stofleth received $948 each month in Social Security payments, and monthly payments of $998.26 from his Chrysler pension, which were automatically deposited to his checking account. During the same period, checks totaling $14,499.15 were written on Stofleth's checking account, including one payable to Linda Copeland in April 2008, for $2,000.

Defense Evidence

Appellant testified on her own behalf and denied killing her father. She last saw him alive the evening of Sunday, February 3, 2008. She discovered he had passed away in the night when she went into his room the next morning to check on him.

When she was a teenager, she had been the target of sexual advances by two older married men in the neighborhood. After she had moved back into her father's home, she experienced several instances of "victimization," which left her feeling vulnerable and frightened.[3] She believed that people were

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[3] Specifically, appellant claimed that shortly after she moved into the house in 2004, someone broke in and put two pages from her father's trust in a box for appellant to see. On another occasion, someone broke in and made a three-way phone call that appeared on Stofleth's bill. One month, an unauthorized charge for $2,000 appeared on Stofleth's credit card. Another time, someone rang the doorbell and tried to break in through the

breaking into her house and taking property, and she was afraid of someone coming in and taking advantage of her. To protect herself, she made herself and her sleeping area as unattractive as possible to deter any intruders.

When appellant found her father dead in his bed, she worried that someone had broken into the house and killed him. But she did not call 911 because she felt traumatized by the victimization she had experienced. She did not want people to know that she was now alone in the house out of fear that someone might take advantage of her father's absence to extort money from her, or harm her or her children.

So instead of reporting her father's death, appellant decided to move the body out of the house. She maneuvered her father's corpse, wrapped in the sheet and blanket from the bed, onto the floor, and tied a rope around his ankles. She then dragged the body to the backyard and concealed it. Although she never checked on the body in the yard, she derived comfort from knowing her father was still there with her on the property.

Appellant believed she had done nothing wrong in connection with her father's death. Nevertheless, she pretended he was alive for the next three months, lying to her son as well as the police. She kept Cavanaugh away from the house so he would not discover his grandfather's absence, and she even wrote

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backyard. Appellant called 911, but the intruders left before police arrived. Police did find the screen on appellant's window was bent and there was a hole punched in the bathroom screen, but Stofleth could not be certain that the damage had not already been there. On another occasion, a neighbor tried to feed appellant poison pasta.

the letter to Cavanaugh that was purportedly from Stofleth. Finally, appellant admitted she used Stofleth's money to pay for food, utilities, and the gardener in order "to keep up an appearance."

Over the three months during which her father's body was concealed in the backyard, she had become "immobilized and couldn't make the decision on what to do." When Stofleth's body was discovered, appellant falsely confessed to killing her father because she thought she would be safer in jail.

Cavanaugh testified that when he visited his mother in early 2008, her behavior was highly unusual, and she was extremely dirty with her hair completely matted. He believed she was mentally ill then, and had been for quite some time. After appellant's arrest, Cavanaugh took pictures to document the filthy state of appellant's living conditions. The house in general smelled "musky," but the smell in appellant's bedroom was "nearly unbearable," and Cavanaugh could not enter without covering his nose with a handkerchief.

Appellant denied that she had any mental health problems, and disputed all of the findings and diagnoses of mental illness. But she acknowledged she was involuntarily committed for three days under Welfare and Institutions Code section 5150 twice in 2004 for suffering from persecutory delusions: the first commitment at the end of April, 2004, and the second one just five days after she had moved in with Stofleth in June.

After her arrest in this case, while she was awaiting trial in 2010, appellant was committed to Patton State Hospital for six months. She was diagnosed with paranoid schizophrenia and treated with the anti-psychotic drug, Abilify. A second psychiatrist diagnosed her as psychotic and unable to stand trial.

Dr. Daniel Martell, a forensic psychologist, met with appellant twice for a total of about eight hours. Based on his examination and evaluation, he diagnosed appellant with paranoid schizophrenia. Dr. Martell found appellant had a history of mental disorders dating back to the early 2000's, and he had no doubt appellant continued to suffer from mental illness, of which she was mostly unaware. He concluded that appellant was actively psychotic when she was interviewed by police, which may have influenced what she told them. Specifically, Dr. Martell opined that rather than covering up for her crimes, appellant may have been operating under the delusion that the neighbors would hurt her if they learned she was suddenly living alone. However, he could not determine whether her actions were to avoid apprehension for killing her father or the product of her delusions.

DISCUSSION

I. *The trial court did not err in denying suppression of appellant's unrecorded statements to Sergeant Vienna in the patrol car*

A. *Relevant background*

Both Sergeant Vienna and appellant testified about the circumstances surrounding appellant's statements in the patrol car at the hearing on appellant's suppression motion.

1. *Sergeant Vienna's account of the circumstances surrounding appellant's unrecorded confession in the patrol car*

Sergeant Vienna testified substantially as he did at trial with respect to conducting the welfare check on May 19, 2008, the search of the house and backyard, and the discovery of Stofleth's body.

According to Sergeant Vienna, as he and Deputy Espinosa began walking through the backyard, appellant seemed to become nervous and started pacing around the trash cans. Appellant requested assistance moving the bins to the front of the house, and Sergeant Vienna asked Deputy Morales to help her. By the time Sergeant Vienna saw the object next to the shed, appellant had left the backyard with Deputy Morales.

Sergeant Vienna told Deputy Morales about the dead body and ordered deputies to secure and lock down the premises pending an investigation. At that point the sergeant did not know whether the death was a homicide or due to natural causes. When he left the backyard, he found appellant standing on the sidewalk in front of the house. Sergeant Vienna told appellant that he had found a body in the backyard, "and it was going to be awhile pending an investigation."

It was a hot day, and appellant asked the sergeant if she could go somewhere cool. Sergeant Vienna offered to turn on the air conditioner in the patrol car and let her sit there while the police did what they needed to do. Appellant sat in the backseat of the car, and after about three minutes, Sergeant Vienna sat in the driver's seat. Sergeant Vienna called to notify the Homicide Bureau about the pending investigation and spoke to a deputy there who suggested Vienna ask appellant what had taken place.

Sergeant Vienna proceeded to ask appellant what happened in the backyard. Appellant responded, "What?" The officer said he had found a decomposing body in the backyard, and asked if it was her father. Appellant replied that it was. Sergeant Vienna then asked her what had happened, and she said she had smothered him. Sergeant Vienna asked, "with what?" Appellant answered, "a pillow."

Sergeant Vienna was shocked. Appellant asked the sergeant if she could have a cigarette. They both got out of the car, and appellant asked if she could go back inside the house. Due to the ongoing investigation, Sergeant Vienna said no, but told her she was free to go wherever else she wanted. Sergeant Vienna suggested she go to the curb or near a tree; appellant sat down on the curb and smoked her cigarette.

Sergeant Vienna acknowledged in court that once appellant told him the dead body was her father's, she was not free to leave. Furthermore, although the sergeant told appellant she could go anywhere she wanted to smoke her cigarette, she was in fact being detained pending the investigation.

2. *Appellant's account of the circumstances surrounding her unrecorded confession in the patrol car*

According to appellant, from the moment she left the backyard at Sergeant Vienna's request to when Vienna joined her in the patrol car, Deputy Morales never left her side. After appellant smoked a cigarette on the front porch, Deputy Morales had appellant sit in Vienna's air conditioned patrol car due to the extreme heat of the day. He left the back door open so that appellant could sit with her legs outside the car and continue to smoke. Appellant sat this way alone in the car while deputies stood 15 to 20 feet away.

After about 15 minutes Sergeant Vienna returned to the car and made a call on his cell phone. He then asked appellant if the body in the backyard was her father's, to which she replied " 'yes.' " Sergeant Vienna responded, " 'Oh, what happened?' " And appellant said, " 'I smothered him.' "

Although appellant was never handcuffed or otherwise restrained prior to her arrest, she felt confined to the back seat. She testified that starting when she was escorted out of the backyard by Deputy Morales through the interrogation by Sergeant Vienna, she never felt free to leave, and she believed she had been deprived of her free will to act, to leave, or to move.

B. A*ppellant was not in custody prior to the recording of her statement*

Citing *Berkemer v. McCarty* (1984) 468 U.S. 420 and *Minnesota v. Murphy* (1984) 465 U.S. 420, the trial court concluded that appellant was not in custody in the patrol car when she first confessed to smothering her father, and therefore ruled appellant's statement in the police car admissible.

In reviewing the trial court's ruling on a motion to suppress on *Miranda* grounds, " 'we accept the trial court's resolution of disputed facts and inferences, and its evaluations of credibility, if supported by substantial evidence. We independently determine from the undisputed facts and the facts properly found by the trial court whether the challenged statement was illegally obtained.' " (*People v. Gamache* (2010) 48 Cal.4th 347, 385.)

Miranda rights come into play only when a suspect is deemed to be "in custody." (*Thompson v. Keohane* (1995) 516 U.S. 99, 102 ["*Miranda* warnings are due only when a suspect interrogated by the police is 'in custody' "]; *People v. Walker* (1988) 47 Cal.3d 605, 629 ["The requirements of *Miranda* apply only when a suspect is in custody"].) In this context, " 'custody' is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion" (*Howes v. Fields* (2012) __ U.S. __ [132 S.Ct. 1181, 1189, 182 L.Ed.2d 17]), such as when "a suspect's freedom of action is curtailed to a

'degree associated with formal arrest.' " (*Berkemer v. McCarty*, *supra*, 468 U.S. at p. 440; *People v. Leonard* (2007) 40 Cal.4th 1370, 1400.) The critical issue for the court to decide is "whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." (*Howes v. Fields*, *supra*, __ U.S. __ [132 S.Ct. at p. 1190].)

"In determining whether a person is in custody in this sense, the initial step is to ascertain whether, in light of 'the objective circumstances of the interrogation, [citation], a 'reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave.' [Citation.] And in order to determine how a suspect would have 'gauge[d]' his 'freedom of movement,' courts must examine 'all of the circumstances surrounding the interrogation.' [Citation.] Relevant factors include the location of the questioning, [citation], its duration, [citation], statements made during the interview, [citations], the presence or absence of physical restraints during the questioning, [citation], and the release of the interviewee at the end of the questioning." (*Howes v. Fields*, *supra*, __ U.S. __ [132 S.Ct. at p. 1189].)

Our Supreme Court's decision in *People v. Moore* (2011) 51 Cal.4th 386 (*Moore*) is particularly instructive here. There, police were investigating the brutal murder of an 11-year-old girl. When the girl's mother arrived home from work that day, she saw the defendant running away from the ransacked home. A deputy sheriff responding to the call followed a trail in the unmown grass from the victim's yard to the defendant's trailer, which lacked electricity. The deputy briefly spoke with the defendant and searched the trailer, finding various items that

aroused suspicions about the defendant. He then asked to interview the defendant in his patrol car because the trailer had grown cold and dark. The interview was recorded. The girl's mother saw the defendant sitting in the deputy's patrol car, and started screaming. At first the defendant ignored her, and then asked, " 'Did they find her?' " (*Moore*, at p. 391.)

The defendant moved to suppress statements he made to police, including those he made to the deputy in his patrol car. The officer testified that he asked to interview the defendant in the patrol car because the trailer had no electricity and it was getting cold and dark. The deputy was in uniform and carrying a firearm, but he never drew the weapon. Neither did he handcuff or pat-search defendant before interviewing him in the patrol car. Moreover, the defendant was not a suspect; rather, the officer considered him an important witness because he had seen the victim that afternoon. The officer testified that although the back doors of the patrol car automatically locked when closed, he would have permitted defendant to leave had he sought to do so. (*Moore*, *supra*, 51 Cal.4th at p. 395.) None of the deputy's questioning contained express or implied accusations against defendant. After leaving defendant in the car for a few minutes, the deputy returned to the car to find defendant still sitting in the backseat with the door open. Defendant's feet were outside the car, and he was smoking a cigarette. (*Id.* at p. 396.)

Our Supreme Court declared: "That the patrol car interview was not custodial is clear." (*Moore*, *supra*, 51 Cal.4th at p. 396.) In so holding, the court cited the following factors: "Defendant's participation was requested and readily given. The location was chosen because the alternative, defendant's residence, was cold and dark; defendant himself agreed it was not

suitable. No indicia of arrest were present. Defendant was neither searched nor handcuffed. No evidence indicated he knew the car doors were locked, and the windows were closed only at his request; later a back door was opened, and defendant partly exited to smoke a cigarette. The interview itself was short, and the questions focused on information defendant had indicated he possessed rather than on defendant's potential responsibility for the crimes." (*Ibid.*) The court concluded that nothing in the interview or its circumstances "would have led a reasonable person to think he was not free to end the questioning and leave." (*Ibid.*)

So it is in the case at bar. Sergeant Vienna was careful to convey to appellant that she was not in custody, and was free to come and go as she pleased. Although Sergeant Vienna was in uniform and had a firearm, he did not draw his weapon, and his "approach throughout was non-confrontational." Appellant was sitting in the air conditioned patrol car because it was extremely hot outside, and appellant had asked to get out of the heat. She was never handcuffed or otherwise restrained. Indeed, according to her own testimony, the back door of the patrol car was open the entire time she was in it, and she was free to put her legs outside the car and smoke. This state of affairs did not change when Sergeant Vienna got into the front seat of the car to complete his paperwork.

We reject appellant's attempts to distinguish *Moore* on the grounds that the defendant there was not a suspect during the interview in the patrol car, and police were not yet aware that his statements were fabricated.

Appellant first contends that, unlike the defendant in *Moore*, she was in custody because she was a suspect and was not

actually free to go, notwithstanding the "illusion" Sergeant Vienna created and maintained that she could leave anytime. This argument, based on the officer's subjective view of the situation, fails because Sergeant Vienna's suspicions are irrelevant to the question of whether appellant was in custody. "*Miranda* warnings are not required simply because a person has become a suspect in the officer's mind." (*People v. Linton* (2013) 56 Cal.4th 1146, 1167, citing *Oregon v. Mathiason* (1977) 429 U.S. 492, 495; *Moore*, *supra*, 51 Cal.4th at p. 402.) Indeed, "[t]he mere fact that an investigation has focused on a suspect does not trigger the need for *Miranda* warnings in noncustodial settings" (*Minnesota v. Murphy*, *supra*, 465 U.S. at p. 431), because, as the high court has explained, "[t]he threat to a citizen's Fifth Amendment rights that *Miranda* was designed to neutralize has little to do with the strength of an interrogating officer's suspicions." (*Berkemer v. McCarty*, *supra*, 468 U.S. at p. 435, fn. 22.)

Appellant further asserts that she did not believe she could leave the patrol car. And because she had confirmed the dead body discovered in her backyard was her missing father, she argues that no reasonable person in her position would have felt free to leave. But appellant's subjective belief (like the sergeant's) is irrelevant to the determination of whether a person is "in custody," which "depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." (*Stansbury v. California* (1994) 511 U.S. 318, 323.)

Appellant would have us ignore the objective indicia of a noncustodial interrogation in the patrol car, and instead look to the officer's and appellant's subjective mental states in

determining whether appellant was in custody when she first told the sergeant she smothered her father. But "[w]hether a person is in custody is an objective test" (*People v. Leonard*, *supra*, 40 Cal.4th at p. 1400), and we must look not to what appellant might have thought, but to " 'the objective circumstances of the interrogation' " itself to determine whether appellant was in custody. (See *Howes v. Fields*, *supra*, __ U.S. __ [132 S.Ct. at p. 1189].) Because the trial court's factual findings about the circumstances of Sergeant Vienna's limited questioning of appellant in the patrol car are supported by substantial evidence, we conclude that, based on the objective indicia of the initial questioning in the patrol car, appellant was not in custody for purposes of *Miranda*.

II. *Because the court did not err in admitting appellant's unrecorded statements in the patrol car, any error in denying the motion to suppress the other statements was harmless beyond a reasonable doubt.*

None of appellant's three statements to police differed in its essence from the others. The key element of each of them was that appellant smothered her father in his bed with a pillow. As respondent contends, if the trial court correctly admitted any one of the statements, any error regarding the others must be deemed harmless beyond a reasonable doubt. (*Arizona v. Fulminante* (1991) 499 U.S. 279, 310.)

We cannot avoid the conclusion that the lengths to which appellant went to hide her father's death and to conceal his body, coupled with her confession in the patrol car that she killed him, constituted overwhelming evidence of her guilt. Appellant testified that she knew her father was dead on February 4, 2008,

and she dragged his body to the backyard to conceal it. Although appellant had managed to call 911 on earlier occasions to report burglars or trespassers in her home, she did not call 911 when she purportedly found her father dead in his bed. After her father died, appellant used his money to pay for her own food, utilities, and the gardener to keep up appearances. A month after her father's death, appellant lied to police by telling the officer that Stofleth was in Oklahoma. She tried to prevent the gardener from discovering Stofleth's corpse in the backyard by telling him not to cut the grass there. Appellant also told her son not to visit in April, and in May, wrote a letter pretending it was from Stofleth in which she told Cavanaugh that Stofleth was in Oklahoma. Finally, when sheriff's deputies came to appellant's home in May to check on Stofleth's welfare, appellant again lied about her father's whereabouts, and even pretended to retrieve a phone number where he could be reached in Oklahoma.

All of this behavior constituted compelling evidence of consciousness of guilt. Combined with appellant's unrecorded confession in the patrol car, we find any error in admitting her other statements to police in violation of *Miranda* to be harmless beyond a reasonable doubt.

III. *Remand for resentencing is required to permit the court to exercise its sentencing discretion in light of an up-to-date supplemental probation report*

Appellant argues and respondent concedes that the matter must be remanded for resentencing because the trial court did not know it had discretion to sentence appellant to probation for a murder conviction under the unusual circumstances of this case. Appellant and respondent also agree that appellant is

entitled to an up-to-date supplemental probation report, which the trial court should consider in weighing its sentencing options. The parties are correct as to both contentions.

Following her conviction for murder, the trial court sentenced appellant to prison for a term of 15 years to life, declaring, "The court has no discretion in this matter and the court will follow the law, of course." The trial court was mistaken. In fact, a trial court does have discretion to grant probation following a murder conviction in an "unusual case[ ] where the interests of justice would best be served." (§ 1203, subd. (e)(1).) "Defendants are entitled to sentencing decisions made in the exercise of the 'informed discretion' of the sentencing court. [Citations.] A court which is unaware of the scope of its discretionary powers can no more exercise that 'informed discretion' than one whose sentence is or may have been based on misinformation regarding a material aspect of a defendant's record." (*People v. Belmontes* (1983) 34 Cal.3d 335, 348, fn. 8.)

Because the trial court apparently did not know it had some limited sentencing discretion in this case, remand is necessary to afford the trial court the opportunity to exercise that discretion. (*People v. Bruce G.* (2002) 97 Cal.App.4th 1233, 1245–1246; *F.T. v. L.J.* (2011) 194 Cal.App.4th 1, 15.)

Appellant is also entitled to a supplemental probation report. Rule 4.411(c) of the California Rules of Court provides that when a trial court has discretion to grant probation, and "sentencing proceedings . . . occur a significant period of time after the original [probation] report was prepared," the trial court must order a supplemental probation report. "The Advisory Committee Comment to the rule suggests that a period of more than six months may constitute a significant period of time, even

if the defendant remains incarcerated and under the watchful eyes of correctional authorities." (*People v. Dobbins* (2005) 127 Cal.App.4th 176, 181.)

Here, the probation report was prepared on October 14, 2011, and filed on January 9, 2015, the date of appellant's original sentencing hearing. Without a doubt, a significant period of time has passed within the meaning of the court rules, and appellant is entitled to an up-to-date supplemental probation report for resentencing.

DISPOSITION

The judgment is affirmed, and the matter remanded for resentencing. Upon remand the trial court is ordered to exercise its discretion regarding probation and order a supplemental probation report to be considered on resentencing.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

CHANEY, Acting P .J.

JOHNSON, J.